

## § 1980.445

103-354 State Director in his/her discretion, and if the lender agrees, may use the existing appraisal report in lieu of having a new appraisal prepared.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40401, Oct. 17, 1988]

### § 1980.445 Periodic financial statements and audits.

All borrowers will be required to submit periodic financial statements to the lender. Lenders must forward copies of the financial statements and the lender's analysis of the statements to the Agency.

(a) *Audited financial statements.* Except as provided in paragraphs (d) and (e) of this section, all borrowers with a total principal and interest loan balance for loans under this subpart, at the end of the borrower's fiscal year of more than \$1 million, must submit annual audited financial statements. The audit must be performed in accordance with generally accepted accounting principles (GAAP). In addition, the audits are also to be performed in accordance with appropriate Office of Management and Budget (OMB) circulars and any Agency requirements specified in this subpart.

(b) *Unaudited financial statements.* For borrowers with a loan balance (principal plus interest at year-end) of \$1 million or less, the Agency will require annual financial statements which may be statements compiled or reviewed by an accountant qualified in accordance with the publication "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" instead of audited financial statements.

(c) *Internal financial statements.* The Agency may require submission of financial statements prepared by the borrower at whatever frequency is determined necessary to adequately monitor the loan. Quarterly financial statements will be required on new business enterprises or those needing close monitoring.

(d) *Minimum requirements.* This section sets out minimum requirements for audited and unaudited financial statements to be submitted to the Agency. If specific circumstances warrant, the Agency may require audited financial statements or independent

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unaudited financial statements in excess of the minimum requirements. For example, loans that depend heavily on inventory and accounts receivable for collateral will normally be audited, regardless of the size of the loan. Nothing in this section shall be considered an impediment to the lender requiring financial statements more frequently than required by the Agency or requiring audited financial statements when the Agency would accept unaudited financial statements.

(e) *Public bodies and nonprofit corporations.* Notwithstanding other provisions of this section, any public body or nonprofit corporation that receives a guarantee of a loan that meets the thresholds established by OMB Circular A-128 or A-133 for coverage under such circular, must provide an audit in accordance with the applicable OMB Circular A-128 or A-133 for the fiscal year of the borrower in which the Loan Note Guarantee is issued. If the loan is for development or purchases made in a previous fiscal year through interim financing, an audit, in accordance with the applicable circular, will also be provided for the fiscal year in which the development or purchases occurred. Any audit provided by a public body or nonprofit corporation in compliance with OMB Circular A-128 or A-133 will be considered adequate to meet the requirements of this section for that year. OMB Circulars are available from the Office of Management and Budget, EOP Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503.

[61 FR 18494, Apr. 26, 1996]

### §§ 1980.446-1980.450 [Reserved]

### § 1980.451 Filing and processing applications.

(a) *Borrowers' and lenders' contact.* Borrowers and lenders desiring FmHA or its successor agency under Public Law 103-354 assistance as provided in this subpart may file preapplications or applications with the County Supervisor or District Director servicing the area in which the project is to be located. In either case, the requirements of §1980.46 of Subpart A of this part must be met. The County Supervisor or District Director receiving the request

for assistance will promptly notify the State Director of the nature and facts of the request. The FmHA or its successor agency under Public Law 103-354 State Director will promptly arrange an early meeting with the borrower and lender representatives to discuss assembly, preparation and processing of preapplications and applications. The State Director may call upon the County Supervisor and District Director to assist the State Office in any way necessary.

(b) *Applications from cooperatives.* Borrowers eligible for loans from the Bank for Cooperatives will be encouraged to obtain guaranteed loans from that source since the Bank for Cooperatives is experienced in making and servicing such loans and can provide substantial counsel to the applicant. Applications must be submitted to the Bank for Cooperatives as a test for credit elsewhere when an insured loan is being considered. (See FmHA or its successor agency under Public Law 103-354 Instruction 2000-Q available in any FmHA or its successor agency under Public Law 103-354 office for Memorandum of Understanding between FmHA or its successor agency under Public Law 103-354 and Farm Credit Administration.)

(c) *Borrowers eligible for Small Business Administration (SBA) assistance.* All borrowers for loan guarantees eligible for SBA assistance will be advised by FmHA or its successor agency under Public Law 103-354 at the time of receipt of the preapplication of the availability of such assistance and will be encouraged to apply to that agency. (See FmHA or its successor agency under Public Law 103-354 Instruction 2000-P available in any FmHA or its successor agency under Public Law 103-354 office for Memorandum of Understanding between SBA and FmHA or its successor agency under Public Law 103-354).

(d) *Loan Priorities.* Applications and preapplications received by FmHA or its successor agency under Public Law 103-354 will be considered in the order received; however, for the purpose of assigning priorities as described in paragraph (d)(3) of this section, FmHA or its successor agency under Public

Law 103-354 will compare an application to other pending applications.

(1) FmHA or its successor agency under Public Law 103-354 will cooperate fully with appropriate State agencies in guaranteeing and insuring loans in a manner which will assure maximum support of the State's strategies for development of its rural areas.

(2) When applications on hand otherwise have equal priority, the applications from a veteran will have preference. A veteran is a person who has been discharged or released from the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard under conditions other than dishonorable and who served on active duty in such forces:

(i) During the period April 6, 1917, through March 31, 1921;

(ii) During the period of December 7, 1941, through December 31, 1946;

(iii) During the period of June 27, 1950, through January 31, 1955; or

(iv) For a period of more than 180 days, any part of which occurred after January 31, 1955; but on or before May 17, 1975. Discharges under conditions other than dishonorable include "clemency discharges."

(3) Priorities will be assigned by FmHA or its successor agency under Public Law 103-354 to eligible applications on the basis of a point system that takes into account project location, the creation and saving of jobs, the cost at which those jobs would be created or saved, seasonal and part-time job impact, and leveraging of FmHA or its successor agency under Public Law 103-354 assistance. The application and supporting information submitted with it will be used to determine an eligible proposed project's priority for available funds or guarantee authority. The priorities described in this paragraph will be used by FmHA or its successor agency under Public Law 103-354 to score projects. A copy of the calculation of the score should be placed in the case file for future reference.

(i) *Location priorities.* The priority score for location will be the score for the highest-ranked category in which the project fits. If the location does not fit one of these categories, it receives

no points for location. The categories, and their point scores, are:

(A) Located in a city or area under 25,000 population (10 points).

(B) Located in a city or area under 25,000 population that is in an area of high unemployment as of the date of application (20 points).

(C) Located in an area of high unemployment as of the date of application, provided the borrower certifies in writing to the State Director in simple narrative or letter form that the project will employ on a permanent, full-time basis (providing at its own cost such training or retraining as may be needed) persons (numbering no fewer than 25 percent of the project's employment) who are members of displaced farm families which recently derived from farming or ranching the majority of their combined incomes but are no longer actively engaged in farming or ranching as operators or employees (35 points).

(ii) *Jobs priorities.* The priority score for jobs created and/or saved is the score for the highest-ranked category in which the project fits. If the project does not fit one of these categories, it receives no points for jobs. The categories, and their point scores, are:

(A) Project will contribute to the overall economic stability of the project area and generate permanent jobs beyond the entrepreneur and the entrepreneur's household (10 points).

(B) Project will contribute to the overall economic stability of the project area and will employ on a permanent, full-time basis a number of persons that is significant in the context of the area's economy (20 points).

(C) Project will contribute to the overall economic stability of the project area, will employ on a permanent, full-time basis a number of persons that is significant in the context of the area's economy, and will retain in that area a significant number of jobs that would otherwise be lost (35 points)

(iii) *Job cost priorities.* The priority score for the project's cost per job is the score for the highest-ranked category in which the project fits. First, divide the amount of the FmHA or its successor agency under Public Law 103-354 guaranteed loan by the number of

jobs created or saved. This will result in the cost per job. Count only full-time jobs. Part-time jobs may be reduced to a fraction of a full-time job and counted. For example, a 20-hour-per-week job, or a job that is full-time for six months per year, is one-half of a job. Second, determine the State's nonmetropolitan household income as described in §1980.451(d)(3)(vi). Third, divide the cost per job by the State's nonmetropolitan household income. For example, if the cost per job is \$10,000 and the State's nonmetropolitan household income is \$20,000, the result will be 0.5. The categories, and their point scores are:

(A) Loans on which the result is greater than 1.5 but less than 2.0 (5 points).

(B) Loans on which the result is from 1.0 to 1.5 (15 points).

(C) Loans on which the result is less than 1.0 (25 points).

If the result exceeds 2.0, a high cost per job in that State, no points are received for job cost.

(iv) *Additional Points.* There shall be added to the score the points indicated for any and all of the following criteria met by the project.

(A) FmHA or its successor agency under Public Law 103-354 guaranteed loan is less than 50 percent of project cost (5 points).

(B) Percentage of guarantee is 10 or more percentage points less than the maximum allowable for a loan of its size (5 points).

(C) Project will, in addition to any permanent full-time jobs, create a significant number of part-time or seasonal jobs that will provide additional income to underemployed residents of the project area without their having to give up any present part-time or seasonal jobs (10 points).

(v) *Administrative Points.* The State Director may assign up to 20 points to an application in addition to those points scored under §1980.451(d)(3) (i) through (iv). These administrative points are intended to be assigned by a State Director only in cases of unforeseen exigencies, emergencies, benefits to other FmHA or its successor agency under Public Law 103-354-assisted projects (including the limiting of financial risks affecting FmHA or its

successor agency under Public Law 103-354 loans and loan guarantees) or the loss of financing if FmHA or its successor agency under Public Law 103-354 funds are not committed in a timely fashion. They may also be assigned in cases in which the project's goods or services are essential to other Federally assisted projects and activities in the area or to the successful implementation of an economic development strategy for the area that is sponsored and/or operated by an agency of the Federal or State government. An explanation for the assigning of these points by the State Director will be appended to the calculation of the project score maintained in the case file. If an application is considered in the National Office, the Administrator may also assign up to 20 points. An assignment of points by the Administrator will be by memorandum, stating the Administrator's reasons, and that memorandum will be appended to the calculation of the project score maintained in the case file. In assigning priorities to applications and in selecting projects for funding, FmHA or its successor agency under Public Law 103-354 will consider State development strategies. Funds (guarantee authority) allocated for use as prescribed in this regulation are to be considered for use by Indian tribes within the State regardless of whether State development plans include Indian reservations within the State's boundaries. It is essential that Indians residing on such reservations have equal opportunity to participate in any benefits of these programs.

(vi) *Indexation*. When current, annual data are not available to determine a State's nonmetropolitan household income for purposes of the calculations described in paragraph (d)(3)(iii) of this section, indexation of census data is necessary. The State Director will use the figure from the most recent decennial census of the United States, increased by a factor representing the increase since the year of that census in the Consumer Price Index ("CIP-U"). That factor shall be furnished annually by the National Office, FmHA or its successor agency under Public Law 103-354.

(e) *Filing preapplications and applications*. Borrowers or lenders may file preapplications described in paragraph (f) of this section if they desire an expression of FmHA or its successor agency under Public Law 103-354 interest prior to assembling the complete application and request for Loan Note Guarantee or they may present the complete application, in one package, including the material required in paragraphs (f), (i), (j), and (k) of this section.

(f) *Preapplications*. Applicants may file preapplications with the County, District, or State Office including:

(1) A letter prepared by the borrower and the lender which shall include:

(i) Borrower's name, address, contact person and telephone number.

(ii) Amount of loan request.

(iii) Name of the proposed lender, address, contact person, and telephone number.

(iv) Brief description of the projects, products and services provided.

(v) Type and number of employment opportunities and unemployment rate where the project will be located.

(vi) Amount of borrower's equity and guarantees offered.

(vii) Anticipated loan maturity and interest rates.

(viii) Availability of raw materials and supplies.

(ix) If a corporation, names and addresses of borrower's parent, affiliates and/or subsidiary firms and a brief description of relationship, products and ownership among borrower, parent, affiliates and subsidiary firms.

(2) Form FmHA or its successor agency under Public Law 103-354 449-22, "Certification of Non-Relocation and Market and Capacity Information Report."

(3) Form FmHA or its successor agency under Public Law 103-354 449-4, "Statement of Personal History," for a proprietor (owner), each partner, officer, director, key employee and stockholders holding 20 percent or more interest in the borrower except for those corporations listed on a major stock exchange and for those so listed if required by FmHA or its successor agency under Public Law 103-354. Forms FmHA or its successor agency under

Public Law 103-354 449-4 are not required to be submitted for elected officials and appointed officials in connection with loan applications from public bodies. Failure to report full, complete and accurate information on the Statement of Personal History may result in FmHA or its successor agency under Public Law 103-354's not making or guaranteeing the loan. Whenever possible, a local, regional, or national credit report, furnished by the lender, will be used to verify data on Form FmHA or its successor agency under Public Law 103-354 449-4.

(4) A record of any pending or final regulatory or legal (civil or criminal) action against the borrower, parent, affiliate, proposed guarantors, subsidiaries, principal stockholders, officers and directors.

(5) For existing businesses, a current balance sheet, and latest profit and loss statement (not more than 60 days old) and financial statements including parent, affiliate and subsidiary firms, for at least the last 3 years or more if necessary for a thorough evaluation.

(6) A detailed projection of gross revenue, net earnings and cash flow statements for 3 years including assumptions upon which such forecasts are based.

(7) Sales projections indicating the percent of the national and local market the business expects to obtain.

(8) Intergovernmental consultation should be carried out in accordance with 7 CFR Part 3015, Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA or its successor agency under Public Law 103-354 Instruction 1940-J, available in any FmHA or its successor agency under Public Law 103-354 Office.

(g) *Preliminary determination by FmHA or its successor agency under Public Law 103-354.* If preparation information indicates the project will not meet FmHA or its successor agency under Public Law 103-354's minimum credit standards for a sound loan, is ineligible, does not have sufficient priority or that funds or guarantee authority are not available for the project, FmHA or its successor agency under Public Law 103-354 will so inform the lender. The lender will be notified in

writing with all reasons for the decision indicated. If it appears that the project is eligible, has sufficient priority, is economically feasible and loan guarantee authority is available, FmHA or its successor agency under Public Law 103-354 will inform the lender and borrower in writing and request that they complete the application.

(h) *Department of Labor certifications.* FmHA or its successor agency under Public Law 103-354 will submit Form FmHA or its successor agency under Public Law 103-354 449-22 to the Department of Labor for the necessary certification that the proposal will not be in conflict with § 1980.412(c) and (d).

(i) *Content of Applications:*

(1) Form FmHA or its successor agency under Public Law 103-354 449-1.

(2) Form FmHA or its successor agency under Public Law 103-354 449-2.

(3) Form FmHA or its successor agency under Public Law 103-354 1940-20, when required by Subpart G of Part 1940 of this chapter.

(4) Architectural or engineering plans, if applicable.

(5) Cost estimates and forecasts of contingency funds to cover inflation or project changes.

(6) Appraisal reports.

(7) For existing businesses a pro forma balance sheet at startup and for at least three additional projected years, indicating the necessary startup capital, operating capital and short-term credit based on financial statements for the last three years, or more (if available); and projected cash flow and earnings statements for at least three years supported by a list of assumptions showing the basis for the projections. The business should submit a current balance sheet with a debt schedule of any debts to be refinanced and an income statement to FmHA or its successor agency under Public Law 103-354, through the lender, every 90 days from the time the application is filed with the lender to the time of issuance of the Loan Note Guarantee. If debt refinancing is requested, a debt schedule is prepared (correlated to the latest balance sheets) reflecting the debts to be refinanced including the name of the creditor, the original loan amount and loan balance, date of loan,

interest rate, maturity date, monthly or annual payments, payment status and collateral that secured such loans.

(8) For new businesses, a pro forma balance sheet at startup and for the next three years, project cash flow (monthly first year, quarterly for two additional years) and projected earnings statements for three years supported by a list of assumptions showing the basis for the projections.

(9) Any credit reports obtained by the lender or FmHA or its successor agency under Public Law 103-354 on the borrower, its principals and parent, affiliate and subsidiary firms.

(10) Form FmHA or its successor agency under Public Law 103-354 400-1, "Equal Opportunity Agreement," if construction costing more than \$10,000 is involved.

(11) Copies of building permits, if applicable, and any necessary certifications and recommendations of appropriate regulatory or other agency having jurisdiction over the project including any pollution control agency.

(12) Personal and corporate financial statements of those guarantors named in §1980.443.

(13) Proposed loan agreement. (See paragraph VII of Form FmHA 449-35). Loan agreements between the borrower and lender will be required. The final executed loan agreement must include the Agency requirements as set forth in the Form FmHA 449-14 including the requirements for periodic financial statements in accordance with §1980.445. The loan agreement must also include, but is not limited to, the following:

(i) Prohibition against assuming liabilities or obligations of others.

(ii) Restrictions on dividend payments.

(iii) Limitation on purchase or sale of equipment and fixed assets.

(iv) Limitations on compensation of officers and owners.

(v) Minimum working capital requirements.

(vi) Maximum debt to net worth ratio.

(vii) Restrictions concerning consolidations, mergers or other circumstances.

(viii) Limitations on selling the business without concurrence of the lender

and FmHA or its successor agency under Public Law 103-354.

(ix) Repayment and amortization of the loan.

(x) List of collateral for the loan including a list of persons and/or corporations guaranteeing the loan with a schedule for providing the lender and FmHA or its successor agency under Public Law 103-354 with personal and/or corporate financial statements. (See §1980.443)

(14) A complete feasibility study when required. (See §1980.442)

(15) Any additional information required by FmHA or its successor agency under Public Law 103-354.

(16) For companies listed on major stock exchanges and/or subject to the Securities and Exchange Commission regulations, a copy of Form 10-K, "Annual Report Pursuant to section 13 or 15 D of the Act of 1934."

(17) Documented evidence that the project is located within or without special flood or mudslide hazard areas.

(18) Notices of compliance with the Privacy Act of 1974.

(i) If the borrower is acting in a personal capacity and not as an entrepreneur for such entities as proprietorships, partnerships, or corporations, and FmHA or its successor agency under Public Law 103-354 solicits personal information for him/her, the individual will be provided Form FmHA or its successor agency under Public Law 103-354 410-9, "Statement Required by the Privacy Act."

(ii) If FmHA or its successor agency under Public Law 103-354 desires to obtain information concerning an individual from any source, FmHA or its successor agency under Public Law 103-354 will provide such source with Form FmHA or its successor agency under Public Law 103-354 410-10, "Privacy Act Statement to References."

(19) On any request for refinancing of existing loan(s) as authorized under §1980.411(a)(11), the lender is required, as a minimum, to obtain the previously held collateral as security for the guaranteed loan(s). Additional collateral will be required by FmHA or its successor agency under Public Law 103-354 when refinancing of unsecured or undersecured loans is unavoidable in order to accomplish the necessary

strengthening of the firm's current position.

(j) *Use of forms.* FmHA or its successor agency under Public Law 103-354 numbered forms will be used where shown in both preapplications and applications. Otherwise, lenders should use their forms, real estate mortgages, security instruments and other agreements, provided such forms do not contain any provisions that are in conflict or are inconsistent with provisions of the subpart.

(k) *Certificate of need.* If the loan request is for health care facilities (e.g., hospitals or nursing homes), a "Certificate of Need" will be obtained by the borrower from the appropriate regulatory or other agency having jurisdiction over the project and submitted to FmHA or its successor agency under Public Law 103-354 by the lender. If a significant part of the project's income will be from third party payors, (e.g., medicare or medicaid), the project will be designed and operated in a manner necessary to meet the requirements of the third-party payors.

*Administrative*

*A. The State Director:*

1. Determines if material and information submitted is completed and signed by the appropriate party in the appropriated capacity.

2. May request the comments and recommendations of the County Supervisor and District Director. Such comments will include but are not limited to the following: Community attitude toward project; a summary of comments regarding the proposal by the lender, county leaders and other interested parties; whether the project is likely to result in the need for additional community facilities such as schools, water, sewer and health care services, and if so, the community's plan for providing such facilities; availability of any required additional labor force and training plans for such force, if needed; an economic forecast of the effect on the community should the project fail, if financed.

3. Will furnish all individuals acting in a personal capacity at the time of filing a preapplication or application and two copies of Form FmHA or its successor agency under Public Law 103-354 410-9. The individual will sign both copies, retaining one and providing FmHA or its successor agency under Public Law 103-354 with the other copy which becomes a part of the loan file.

4. Will provide any source whom FmHA or its successor agency under Public Law 103-

354 obtains information concerning an individual with two copies of Form FmHA or its successor agency under Public Law 103-354 410-10. The source will sign both copies, retain one and provide FmHA or its successor agency under Public Law 103-354 with the other copy which becomes a part of the loan file.

5. Will input the necessary data via terminal screens into the Rural Community Facility Tracking System (RCFTS). The RCFTS data structure consists of 3 sets: Applicant/Borrower (BOR), Facility (FAC), and Loan/Grant Request (LGR) sets. There are multiple screens for the BOR and LGR sets. The State Director may, if he/she so desires, prepare a Form FmHA or its successor agency under Public Law 103-354 2033-34, "Management System Card—Business and Industry," in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2033-F.

6. Will forward immediately to the National Office on all projects.

(a) Form FmHA or its successor agency under Public Law 103-354 449-22 (7 copies) for loans over \$1 million and when direct employment increases more than 50 employees.

(b) For insured loans where the borrower leases facilities to another, submit Form FmHA or its successor agency under Public Law 103-354 449-22 for such borrower. The lessor(s) will also be required to provide Form FmHA or its successor agency under Public Law 103-354 449-22. Subsequent loan requests require resubmission of Form FmHA or its successor agency under Public Law 103-354 449-22.

(c) A local, national or regional credit report and Form FmHA or its successor agency under Public Law 103-354 449-4 for all loans over one million dollars or for loans, regardless of size, when the State Director believes a character evaluation check is advisable.

NOTE: Forms FmHA or its successor agency under Public Law 103-354 449-22 and FmHA or its successor agency under Public Law 103-354 449-4 should *only* be processed if a *complete* preapplication or application has been received.

*B. Miscellaneous Administrative provisions:*

1. *Par (f).* Preapplications are not to be accepted or processed unless a lender has agreed in writing to finance the proposal. The preapplication letter is a joint letter prepared by the borrower and lender.

2. *Par (g).* Upon receipt of all preapplications in excess of \$5 million, the State Director will transmit to the National Office the material required under paragraph (f)(1), (f)(4) and (f)(5) of this section together with recommendations and observations an analysis of the quality and permanency of the employment opportunities involved in the project. The National Office will review

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the proposed project in relation to objectives, priorities and intent of the program and will advise the State Director. After receiving the National Office advice or for loans less than \$5 million, the State Director will inform the borrower of the decision.

3. *Par (i)*. State Director submits a transmittal letter with recommendations on loan applications requiring National Office review. Included are:

- (a) Loan file.
- (b) Form FmHA or its successor agency under Public Law 103-354 449-29, "Project Summary—Business Industrial Loan Division," including State Director's a spread sheets, financial history and projections (use attachments to Project Summary if necessary).
- (c) Proposed Form FmHA or its successor agency under Public Law 103-354 449-14.
- (d) Copy of FmHA or its successor agency under Public Law 103-354 State Loan Review Board Minutes.
- (e) Notification of required financial and other reports, their frequency, due dates and fiscal yearend.

4. *Par (i)(9), Credit reports.*

(a) The National Office has a contract to provide credit reports for preapplications, applications, and in instances after the loan(s) is made, where a credit report is needed.

(b) States should first try to have the lender provide such a report because credit reports are the responsibility of the lender.

(c) Any state needing a credit report should telephone the National Office, Director, B&I, and give the name of the business and the city and State location. The report will be mailed to the State the same day, if possible.

5. *File documentation.* Applications will be organized in a loan file in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2033-A (available in any FmHA or its successor agency under Public Law 103-354 office.) An 8-position folder with tabs will be utilized.

The State Director may supplement the Position Guides to include specific legal requirements within their State. If the lender prepares a complete application package, it may accompany the docket provided the docket is organized in a binder, indexed and tabbed. Feasibility studies should be kept separate. It is the responsibility of FmHA or its successor agency under Public Law 103-354 employees who work on applications or servicing actions to add to the correspondence section of the loan file (also known as the running record) a written report of any field visits, meetings, telephone conversations and memorandums covering decisions or reasons for FmHA or its successor agency under Public Law 103-354's actions on the cases. Particular attention must be given to this requirement on cases that become delin-

quent or problems in order that FmHA or its successor agency under Public Law 103-354 position will be defensible in the event of an adverse action.

6. *Par (i), (13), Audit agreements and requirements.* FmHA or its successor agency under Public Law 103-354 urges the use of a written agreement between the lender and borrower to assure that there is no misunderstanding concerning FmHA or its successor agency under Public Law 103-354 audit requirements.

7. *Par (i), Forms and documents found in loan docket.* The following table is a guide to forms and documents used in completing an application and loan docket. The filing position within the 8 position folder is shown on the right. Some of these items may not be applicable for a particular loan. However, a complete loan docket may need to include items in addition to the following:

**DESCRIPTION OF RECORD OR FORM NUMBER AND TITLE**

|  |  | Filing position |
|--|--|-----------------|
| AD-425 .....   | Contractor's Affirmative Action Plan For Equal Employment Opportunity. | 1               |
| FmHA or its successor agency under Public Law 103-354 400-1.   | Equal Opportunity Agreement.   | 6               |
| FmHA or its successor agency under Public Law 103-354 400-3.   | Notice to Contractors and Applicants.                                  | 6               |
| FmHA or its successor agency under Public Law 103-354 400-4.   | Assurance Agreement ..   | 3               |
| FmHA or its successor agency under Public Law 103-354 400-6.   | Compliance Statement ..  | 6               |
| FmHA or its successor agency under Public Law 103-354 410-8.   | Applicant Reference Letter.  | 3               |
| FmHA or its successor agency under Public Law 103-354 410-9.   | Statement Required by the Privacy Act.                                 | 3               |
| FmHA or its successor agency under Public Law 103-354 410-10.  | Privacy Act Statement to References.                                   | 3               |
| FmHA or its successor agency under Public Law 103-354 424-12.  | Inspection Report .....  | 6               |
| FmHA or its successor agency under Public Law 103-354 1940-3.  | Request for Obligation of Funds—Guaranteed Loans; Filing Position 2.   | 2               |
| FmHA or its successor agency under Public Law 103-354 1940-22. | Environmental Checklist for Categorical Exclusion, or.                 | 3               |
| FmHA or its successor agency under Public Law 103-354 1940-21. | Environmental Assessment for Class I Action, or.                       | 3               |
| Exhibit H, Subpart G of Part 1940.                             | Environmental Assessment for Class II Action.                          | 3               |
|  | Environmental Impact Statement.  | 3               |



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| DESCRIPTION OF RECORD OR FORM NUMBER<br>AND TITLE—Continued    |   |                         | DESCRIPTION OF RECORD OR FORM NUMBER<br>AND TITLE—Continued         |   |                         |
|--|---|-------------------------|---|---|-------------------------|
|  |   | Filing<br>posi-<br>tion |   |   | Filing<br>posi-<br>tion |
| FmHA or its successor agency under Public Law 103–354 440–57.  | Acknowledgement of Obligated Funds/ Check Request.  | 2                       | Corporate or Personal Financial Statements of Guarantors.           | 3 |                         |
| FmHA or its successor agency under Public Law 103–354 449–1.   | Application for Loan and Guarantee.   | 3                       | S.E.C. 10–K Report .....  | 3 |                         |
| FmHA or its successor agency under Public Law 103–354 449–2.   | Statement of Collateral   | 5                       | Pro-forma Balance Sheet.  | 3 |                         |
| FmHA or its successor agency under Public Law 103–354 449–4.   | Statement of Personal History.  | 3                       | Current Profit and Loss Statements.                                 | 3 |                         |
| FmHA or its successor agency under Public Law 103–354 1940–20. | Request for Environ- mental Information.  | 3                       | Projection of Gross Rev- enues and Net Earn- ings.                  | 3 |                         |
| FmHA or its successor agency under Public Law 103–354 449–14.  | Condition Commitment for Guarantee.   | 2                       | Cash Flow Statements, 3 Years with Assump- tions.                   | 3 |                         |
| FmHA or its successor agency under Public Law 103–354 449–22.  | Certification of Non-relo- cation and Market and Capacity Information Report.                 | 3                       | Appraisal Reports .....   | 8 |                         |
| FmHA or its successor agency under Public Law 103–354 449–29.  | Project Summary—Busi- ness Industrial Loan Division.  | 3                       | Documentation for Con- sidering Refinancing.                        | 3 |                         |
| FmHA or its successor agency under Public Law 103–354 449–34.  | Loan Note Guarantee ...   | 2                       | Financial Statements for last 3 years.                              | 3 |                         |
| FmHA or its successor agency under Public Law 103–354 449–35.  | Lender's Agreement .....  | 2                       | Complete Debt Sched- ule.   | 3 |                         |
| FmHA or its successor agency under Public Law 103–354 449–36.  | Assignment Guarantee Agreement.   | 2                       | Interim Financial State- ments.                                     | 3 |                         |
| FmHA or its successor agency under Public Law 103–354 1980–19. | Guaranteed Loan Clos- ing Report.   | 2                       | Aging and Turnover of Receivables and In- ventory.                  | 3 |                         |
|  | Annual Audit Report .....   | 1                       | Credit Reports .....  | 3 |                         |
|  | Borrower Financial Statements.  | 3                       | Records of any Pending or Final Regulatory Litigation.              | 3 |                         |
|  | Chattel Security Instru- ments.   | 1                       | Comments on any State Development Strate- gies..                    | 3 |                         |
|  | Report—Exhibit B, FmHA or its suc- cessor agency under Public Law 103–354 Instruction 2015—C. | 1                       | Flood or Mudslide Haz- ard Area Statement.                          | 3 |                         |
|  | Borrower's Certification of Indebtedness.   | 1                       | National Historic Preser- vation Act Statement.                     | 3 |                         |
|  | Lender's Loan Agree- ment.  | 2                       | State Review Board Minutes.   | 3 |                         |
|  | Promissory Notes .....  | 2                       | Certificate of Need (Health Care Facili- ties).                     | 3 |                         |
|  | Bond (specimen) Bond Ordinances, Bond Transcripts or Similar Items.                           | 2                       | Clean Air and Water Pollution Control Act Requirements State- ment. | 3 |                         |
|  | Running Case Record ..  | 3                       | Correspondence (ex- cluding closing instru- ments).                 | 4 |                         |
|  | Market Analysis Infor- mation (feasibility study).  | 3                       | Department of Labor Certification.                                  | 4 |                         |
|  | Borrower's and Lender's Preapplication Letters.   | 3                       | Mortgagee Title Insur- ance Policy.                                 | 5 |                         |
|  | Lender's Evaluation and Recommendations.  | 3                       | Title Opinions .....  | 5 |                         |
|  | Cost Estimates and Forecast for Contin- uency Funds.  | 6                       | By-Laws, Resolutions, or Regulations and Amendments.                | 5 |                         |
|  | Dun and Bradstreet Re- ports.   | 3                       | Articles of Incorporation, By-laws and Regula- tions or Charter.    | 5 |                         |
|  |   |                         | Lender Security agree- ments and Financing Statements.              | 5 |                         |
|  |   |                         | Lender Mortgages and Notes.   | 5 |                         |
|  |   |                         | Advice of Office of Gen- eral Counsel from Re- view of Docket.      | 5 |                         |
|  |   |                         | Partnership Agreements  | 5 |                         |

**RHS, RBS, RUS, FSA, USDA**

**§ 1980.452**

| DESCRIPTION OF RECORD OR FORM NUMBER<br>AND TITLE—Continued |  |                         | DESCRIPTION OF RECORD OR FORM NUMBER<br>AND TITLE—Continued |  |                         |
|---|--|-------------------------|---|--|-------------------------|
|   |  | Filing<br>posi-<br>tion |   |  | Filing<br>posi-<br>tion |
|   | Other Documents used<br>in Loan Closing.   | 5                       |   | Lender's Audit of Ex-<br>penditures and<br>Project Costs.  | 6                       |
|   | Schedule of Stock Own-<br>ership.  | 5                       |   | Evidence of Concur-<br>rence and compliance<br>with Construction Re-<br>quirements of State,<br>County, and Municipal<br>Government (includ-<br>ing building permits). | 6                       |
|   | Franchise Agreement ....   | 5                       |   | Lender's Closing Certifi-<br>cation.   | 6                       |
|   | Construction Contracts<br>and Compliance<br>Statements.  | 6                       |   | Lender's Loan Servicing<br>Plan.   | 6                       |
|   | Lender's Approval of<br>Plans and Specifica-<br>tions.   | 6                       |   | Loan Closing Opinion of<br>Lender's Legal Coun-<br>sel.  | 6                       |
|   | Engineer's Certification<br>of Satisfactory Com-<br>pletion in Accordance<br>with Plans and Speci-<br>fications. | 6                       |   |  |                         |

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40401, Oct. 17, 1988; 53 FR 45258, Nov. 9, 1988; 55 FR 26199, June 27, 1990; 56 FR 8271, Feb. 28, 1991; 61 FR 18495, Apr. 26, 1996]

**§ 1980.452 FmHA or its successor agency under Public Law 103-354 evaluation of application.**

FmHA or its successor agency under Public Law 103-354 will evaluate the application and make a determination whether the borrower is eligible, the proposed loan is for an eligible purpose and that there is reasonable assurance of repayment ability, sufficient collateral and sufficient equity and the proposed loan complies with all applicable statutes and regulations. If FmHA or its successor agency under Public Law 103-354 determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee. If FmHA or its successor agency under Public Law 103-354 is able to guarantee the loan, it will provide the lender and the borrower with Form FmHA or its successor agency under Public Law 103-354 449-14, listing all requirements for such guarantees. FmHA or its successor agency under Public Law 103-354 will include in the requirements of the Conditional Commitment for Guarantee a full description of the approved use of guaranteed loan funds as reflected in the Form FmHA or its successor agency under Public Law 103-354 449-1. The Conditional Commitment for Guar-

antee may not be issued on any loan until the State Director has been notified by the National Officer that the Statements of Personal History(s) have been processed and cleared. FmHA or its successor agency under Public Law 103-354 State Directors are the only persons authorized to execute Form FmHA or its successor agency under Public Law 103-354 449-14.

*Administrative*

State Director evaluates the application and considers:

A. Rural area determinations. (See § 1980.405 of this subpart.)

B. Community impact of the proposal which includes:

1. Number of businesses and industries in the town or city.

2. Employment impact upon the community.

3. Availability of skilled and unskilled labor and permanency of employment opportunities.

4. Vocational and educational facilities to provide skilled labor, if applicable.

5. Policies of applicant regarding unemployment, lay-offs, wage scales, etc.

C. If debt refinancing is requested, consider in accordance with § 1980.411(a)(11) of this subpart and:

1. A complete review will be made to determine whether it is essential to restructure the company's debts on a schedule that will allow the business to operate successfully